

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of CALIFORNIA WATER SERVICE COMPANY (U-60-W), a California corporation, for an order 1) authorizing it to increase rates for water service by \$92,765,000 or 19.4% in test year 2014, 2) authorizing it to increase rates on January 1, 2015 by \$17,240,000 or 3.0%, and on January 1, 2016 by \$16,950,000 or 2.9% in accordance with the Rate Case Plan, and 3) adopting other related rulings and relief necessary to implement the Commission's ratemaking policies.

A.12-07-007
(Filed July 5, 2012)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
TO THE CITIES OF LANCASTER AND SELMA'S COMMENTS ON AND
OPPOSITION TO THE MOTION TO ADOPT THE PROPOSED
SETTLEMENT**

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November 27, 2013

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I. INTRODUCTION

Pursuant to Rule 12.2 of the California Public Utilities Commission's Rules of Practice and Procedure and Assigned Commissioner Sandoval's and Assigned Administrative Law Judge ("ALJ") Robert Mason's "Ruling Amending Scoping Memo and Ruling," the Office of Ratepayer Advocates ("ORA") hereby submits its reply comments on the City of Lancaster's and City of Selma's comments on and opposition to the motion to adopt the October 30, 2013 settlement agreement between California Water Service Company ("Cal Water"), ORA, The City of Carson, The City of Lancaster, The City of Selma, The City of Visalia, The County of Kern, The County of Lake, The Leona Valley Town Council, Residents Against Water Rates (R.A.W.), The Utility Reform Network, and Jeffrey Young ("Settlement Agreement").

Here, ORA will address both the City of Lancaster's and the City of Selma's November 13, 2013 "Comments On And Opposition To The Motion To Adopt The Proposed Settlement Agreement" ("Comments"). ORA will discuss the City of

Lancaster's and the City of Selma's violations of Rule 12.6 of the Commission's Rules of Practice and Procedure related to confidentiality and inadmissibility. ORA will also show that the Cities' proposals (herein also referred to as Lancaster Proposal and Selma Proposal) lack merit and should not be adopted.

II. THE COMMISSION SHOULD NOT REWARD THE CITY OF LANCASTER'S AND CITY OF SELMA'S DISCLOSURES OF CONFIDENTIAL SETTLEMENT DISCUSSIONS THAT VIOLATED RULE 12.6

A. The City of Lancaster and the City of Selma disclosed confidential settlement discussions in their Comments

In Comments, the City of Lancaster ("Lancaster") and the City of Selma ("Selma") made several statements regarding their perspective on discussions that transpired during confidential settlement negotiations. Pursuant to Rule 12.6, disclosing these discussions is inappropriate and impermissible. Furthermore, Lancaster's and Selma's portrayals of ORA's actions in the settlement discussions are limited, one-sided descriptions that do not accurately portray what occurred during the settlement discussions. Here, ORA provides examples of the statements City of Lancaster and City of Selma made and explains how the Comments violate Rule 12.6.

The City of Lancaster's Comments describe confidential settlement negotiations with Cal Water that resulted in a proposal that the Lancaster City Council accepted and approved on September 10, 2013. Lancaster's Comments characterize this proposal as the "Lancaster Settlement" that Cal Water apparently agreed to with the condition that ORA accept it as well.¹ Lancaster went on to describe confidential settlement negotiations with ORA, from Lancaster's perspective: "Remarkably, ORA opposed the Lancaster Settlement."²

The City of Selma's Comments also describe confidential settlement negotiations when they allege that Cal Water informed the City of Selma that Cal Water would be

¹ City of Lancaster's Comments, page 2.

² City of Lancaster's Comments, page 4.

unable to deviate from the Settlement Agreement without ORA's acceptance and that ORA would not support deviations from the Settlement Agreement.³ Selma's Comments go on to provide an account of a discussion between Cal Water and Selma wherein Cal Water told Selma that Cal Water had another tentative agreement that deviated from the Settlement Agreement, that Cal Water also conditioned this separate agreement on ORA's acceptance, and that ORA did not accept that alternate proposal.⁴

Rule 12.6 of the Commission's Rules of Practice & Procedure states in part:

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

Thus, Rule 12.6 prohibits disclosure of any discussions, admissions, concessions or offers to settle that are oral or written made during settlement without the parties' consent.

Here, the City of Lancaster and the City of Selma disclosed settlement discussions that arose during their negotiations with Cal Water and ORA. Pursuant to Rule 12.6, this is a violation of the confidentiality provisions of that rule that all parties in settlement are required to follow unless all participants provide permission for such disclosures. ORA did not authorize either Lancaster or Selma to disclose settlement discussions.

The City of Lancaster and the City of Selma not only improperly disclosed the content of confidential communications, their disclosure did not accurately convey either the content of what was said or the actions of the parties involved. Instead, both

³ City of Selma's Comments, page 2.

⁴ City of Selma's Comments, page 2.

Lancaster and Selma offered an account of the settlement discussions that was designed to advance their positions in this proceeding.

B. Settlements are only effective when participants trust the process involved and know that confidentiality is a supreme priority in cultivating settlements

Rule 12.6 helps to ensure settlement participants can trust the settlement process will not be undermined by disclosures of discussions that might be utilized against them at a later date if settlement is not eventually achieved. Thus, requiring all participants to keep discussions confidential is essential to trust-building and the development of a consensus that is essential in creating settlement agreements. If participants cannot be confident that their settlement positions and the negotiation process itself are not subject to disclosure, participants will not be open to frank discussions that may lead to settlement for fear that such information will harm them later.

C. Given Lancaster's and Selma's violations of confidentiality, the Commission should wholly reject their respective proposals

The Commission should express its displeasure with Lancaster's and Selma's inappropriate disclosure of confidential settlement discussions and negotiating positions by rejecting their proposals outright. This will send a strong message to all litigants before the Commission that these types of disclosures will not be tolerated and that parties will not be allowed to benefit from such violations. The Commission acted appropriately in Decision 07-09-006 where it disregarded the content of a petitioner's filing for a rulemaking that included a settlement proposal. The Commission agreed that the petitioner's action was a breach of confidentiality and a violation of Rule 12.6. The Commission approved the petitioner's request for a rulemaking, but did not consider the settlement proposal the petitioner wrongly included and disclosed.⁵ Accordingly, the Commission should not reward Lancaster's and Selma's actions by adopting their respective proposals as presented in their Comments. Should the Commission disagree

⁵ D.07-09-006, page 8.

with ORA and consider the City of Lancaster's and the City of Selma's proposals on their merits, ORA demonstrates below that the proposals are based on flawed assumptions and analysis, and therefore should also be rejected based on their lack of merit.

III. THE LANCASTER PROPOSAL AND THE SELMA PROPOSAL LACK MERIT AND SHOULD BE REJECTED

A. Lancaster Proposal

The City of Lancaster in its Comments requests that the Commission (1) modify the Settlement Agreement's Test Year 2014 sales forecast for the Lancaster area of the Antelope Valley District – changing the Settlement Agreement's average residential monthly usage forecast by 50% from 24 ccf⁶ to 36 ccf, and (2) establish a new Sales Reconciliation Mechanism ("SRM") for the Antelope Valley District's Lancaster rate area. As ORA will demonstrate, the Lancaster Proposal is based on flawed assumptions and analysis, lacks merit and should be rejected.

1. The Lancaster Proposal is not reasonable in light of the whole record.

The Lancaster Proposal's 36 ccf/month forecast is not based on facts presented in this proceeding. This is not an estimate based on any forecasting methodology or recorded values, but merely an artificial device to achieve the City of Lancaster's desired level of Test Year rate increase by a short-term revenue deferral, and more importantly to promote Cal Water's SRM request in this general rate case ("GRC"). Because the Lancaster Proposal is not based on facts presented in this proceeding, it is not based on record evidence and is not reasonable in light of the whole record.

The mechanism for achieving a 6.5% increase⁷ presented in the Lancaster Comments is an artificial device because although it sounds like the revenue requirement would be smaller, that is not the case. While essentially keeping the settled revenue requirement, the Lancaster proposal would increase the sales estimate, which in turn

⁶ ccf = 100 cubic feet.

⁷ City of Lancaster's Comments, page 5.

increases the expected revenue at present rates. This has two main effects - making the percentage difference between revenue at present rates and the proposed revenue requirement appear smaller (thus achieving 6.5%), and reducing rates charged to customers (with more sales anticipated, a smaller rate per unit is needed to generate the same amount of revenue).

However, because essentially the same amount of revenue is still needed, customers will ultimately have to pay the under-collections that result from an artificially high sales forecast with interest; customers will either pay in WRAM/MCBA⁸ surcharges or in unknown rate increases through the Sales Reconciliation Mechanism proposed by Cal Water and opposed by ORA in its Opening Brief to be filed on November 27, 2013.

Lancaster characterized the Settlement Agreement's 24 ccf/month residential sales forecast as "outlying and unreasonably low."² Lancaster also described the 24 ccf/month as "an unlikely and unreasonably precautionary low sales forecast supported by ORA;"¹⁰ interestingly, it failed to mention that this forecast is also supported by Cal Water as part of the Settlement Agreement as well as in Cal Water's Rebuttal Testimony. The Settlement Agreement states that the "Parties generally agree to use ORA's sales estimates per customer since it [*sic*] reasonably aligns with recent sales trends."¹¹ [Emphasis Added] Additionally, Cal Water states that it "agrees with [ORA's] estimate for average sales per service connection by sub-regions in the Antelope Valley District (Lancaster, Leona Valley, Fremont-Lake Hughes areas)."¹²

Furthermore, **Table ORA-1** below clearly shows that the Lancaster Proposal's 36 ccf/month sales forecast is unreasonably high as it does not reflect the steady, downward

⁸ WRAM/MCBA stands for Water Revenue Adjustment Mechanism and Modified Cost Balancing Account.

² City of Lancaster's Comments, page 8.

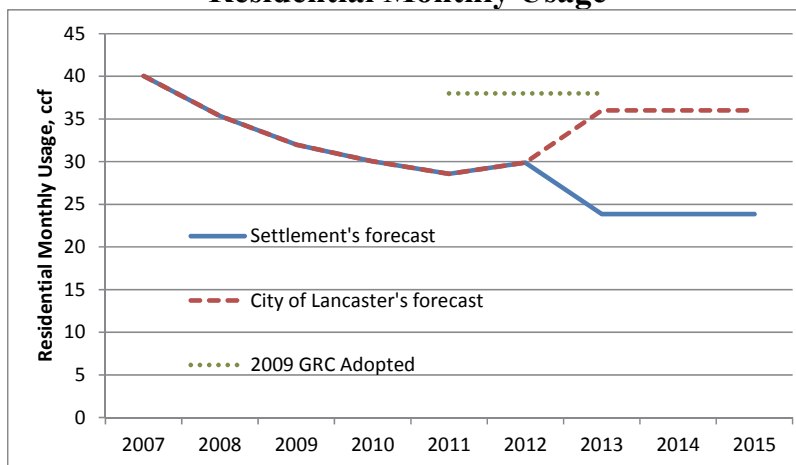
¹⁰ City of Lancaster's Comments, page 5.

¹¹ Settlement Agreement, page 67.

¹² Exhibit CWS-141 (CWS Rebuttal Book 3), page 11.

trend in recent years.

Table ORA-1. Antelope Valley District – Lancaster Area’s Residential Monthly Usage



In proposing the 36 ccf/month forecast, Lancaster and by extension Cal Water would have the Commission ignore six years of recorded data (2007-2012) showing a clear declining trend, and instead rely on a slight increase in 2012 usage that may or may not be due to weather variation. Lancaster and Cal Water are essentially asking the Commission to find reasonable an estimated 20% increase from 2012 to 2014 -- from the recorded 30 ccf in 2012 to an estimated 36 ccf in 2014. (Recorded data shows an average monthly use of 30 ccf, and not the 31 ccf claimed by Lancaster.) This projected increase is counter-intuitive when considered together with Cal Water’s conservation program. The Settlement Agreement proposes a budget to fund continuing conservation efforts in the Antelope Valley District to reduce water use that will enable compliance with Senate Bill X7-7 mandate.¹³ It is therefore reasonable to expect conservation efforts to continue to provide downward pressure to per-customer usage in this GRC period. Lastly, it is

¹³ Settlement Agreement, Attachment B, Chapter 4 – Conservation Program. SB X7-7 requires state to achieve 20% reduction in urban per capita water use by December 31, 2020.

important to note that Cal Water's testimony shows 29 ccf as its estimated typical (i.e., average) residential customer usage in the Lancaster service area.¹⁴

In the analysis and support for the much higher estimate of 36 ccf, Lancaster cited several indications of robust economic growth such as the addition of "over 40 new businesses to Lancaster."¹⁵ However, it is unclear whether the City's economic growth occurs within Cal Water's service area, and furthermore how this would cause Cal Water's residential customers to use more water to the extent assumed in the City of Lancaster's forecast. As stated in its comments, of the City's nearly 157,000 population, Cal Water only serves approximately 800 customers.¹⁶ With Cal Water's Lancaster customers making up a tiny portion of the City's population, the Commission should not consider the City's cited "renewed economic vitality"¹⁷ as a significant contribution to increasing Cal Water's per-customer water use.

2. The Lancaster Proposal's unrealistically high sales forecast perpetuates conditions requiring large rate increases.

The City of Lancaster correctly pointed out in its comments "*the average monthly sales of 38 CCF adopted in Cal Water's last general rate case decision.*"¹⁸ These 2011 Test Year and 2012 Escalation Year sales forecasts were reflected in the rates established by D.10-12-017 (2009 GRC). The actual average residential monthly sales for 2011 and 2012 are 28.6 ccf and 29.9 ccf, respectively, or only about 76% of the forecasted level. This variation is the main driver for the large rate increase seen in this GRC for the Antelope Valley District. Knowingly adopting unrealistically-high sales estimates perpetuates conditions where large rate increases will be needed in the next rate

¹⁴ Exhibit CWS-21 (Report on the Results of Operation for the Antelope Valley District), page 8.

¹⁵ City of Lancaster's Comments, page 7.

¹⁶ City of Lancaster's Comments, page 3.

¹⁷ City of Lancaster's Comments, page 7.

¹⁸ City of Lancaster's Comments, page 7.

adjustment, which is exactly the opposite of what the City of Lancaster purportedly is seeking to avoid.

3. The City of Lancaster failed to provide complete information on the impacts of its proposal.

The City of Lancaster provided in great numerical detail how its proposal would defer and reduce Test Year 2014 increase to base rates. Remarkably, it made no attempt to provide numerical estimates for Escalation Years' rate increases if actual sales fall short of its overly-high estimates, which as explained above is a virtual certainty. This is an obvious attempt to obfuscate the full ratepayer impacts of the Lancaster Proposal. Lancaster should not expect the Commission or its constituents to decide on the merits of the proposal based on partial disclosure of likely impacts to customer rates in this GRC cycle.

4. Proposing a new mechanism (SRM) to adjust for inaccurate sales forecasting while purposely and grossly over-projecting sales only serves to promote Cal Water's SRM agenda.

The City of Lancaster states that its proposal "provides the safety net in the form of the SRM to adjust sales in the unlikely event that sales do not continue to increase."¹⁹ This statement implies that average residential sales level falling short of its 36 ccf/month forecast is an unlikely event. As explained above, actual sales falling short of the 36 ccf mark is a virtual certainty. By insisting on artificially inflated sales forecasts and using them to justify the need for a safety net in a form of SRM, the Lancaster Proposal only serves to advance Cal Water's agenda which is to establish the SRM in this GRC.

ORA strongly opposes the establishment of SRM (Cal Water's Special Request #4), and in fact it remains the only issue being litigated between ORA and Cal Water in this GRC. ORA's Opening Brief, to be filed on November 27, 2013, explains in great detail why Cal Water's SRM request is not in the best interest of Cal Water's ratepayers. The Commission as well as the Lancaster ratepayers should question why the City of

¹⁹ City of Lancaster's Comments, page 8.

Lancaster would chose to align itself with Cal Water and support the company's SRM agenda.

The City of Lancaster commented that it cannot reconcile ORA's stated mission with ORA's opposition to the Lancaster Proposal.²⁰ ORA can assure the Commission that ORA has not taken its eye off the ball in this proceeding and its team of analysts and engineers have been working hard to fulfill its statutory mission to obtain the lowest possible rate for service consistent with reliable and safe service, and in fulfilling this goal, to advocate for customer and environmental protections.

B. Selma Proposal

The City of Selma in its Comments requests that the Commission (1) modify the Settlement Agreement's Test Year 2014 sales forecast for the Selma District – changing the Settlement Agreement's average residential monthly usage forecast by 56.5% from 23 ccf to 36 ccf, and (2) establish a new SRM for the Selma District. While it appears that the Selma Proposal is virtually identical to the Lancaster Proposal, ORA will repeat and where appropriate expand its analysis to address the proposal comprehensively. ORA will demonstrate that the City of Selma's request is based on flawed assumptions and analysis, lacks merit, and should be rejected.

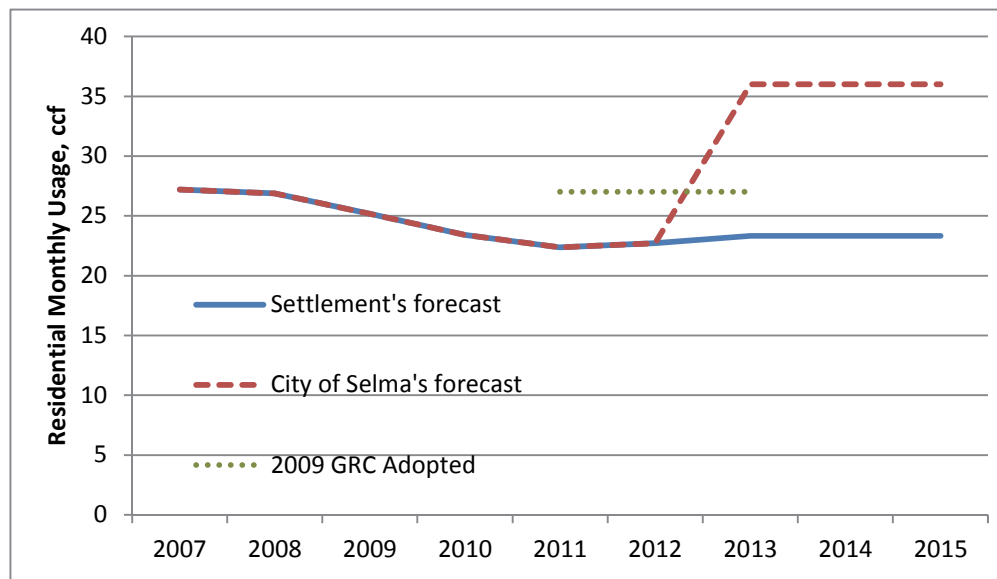
1. The Selma Proposal is not reasonable in light of the whole record.

Like the City of Lancaster, the City of Selma's 36 ccf/month forecast is not based on facts presented in this proceeding. Similarly, this is not an estimate based on any forecasting methodology or recorded values, but merely an artificial device to achieve the City of Selma's desired level of Test Year rate increase by a short-term revenue deferral, and more importantly to promote Cal Water's SRM request. Because the Selma Proposal is not based on facts presented in this proceeding, it is not based on record evidence and is not reasonable in light of the whole record.

²⁰ City of Lancaster's Comments, page 4.

Selma in its comments described the ORA’s 23 ccf/month residential sales forecast as “outlying and unreasonably low,”²¹ yet it has chosen not to raise its objection to or even filed testimony on this issue in this proceeding.²² The Commission should note that Cal Water’s original estimate is even lower, at only 22 ccf/month, and Cal Water has expressed its unconditional agreement with ORA’s 23 ccf/month estimate in both the Settlement Agreement and in the company’s own Rebuttal Testimony.²³ **Table ORA-2** below clearly shows that the Selma Proposal’s 36 ccf/month forecast clearly does not reflect the steady downward or at most leveling trend in recent years, and therefore is “outlying and unreasonably” high.

Table ORA-2. Selma District’s Residential Monthly Usage



In proposing the 36 ccf/month forecast, the City of Selma and by extension Cal Water would have the Commission ignore six years of recorded data showing a declining, or at most leveling, trend in customer water use. Selma and Cal Water are essentially

²¹ City of Selma’s Comments, page 6.

²² The City of Selma was granted party status in this proceeding since October 25, 2013.

²³ See Exhibit CWS 141 (CWS Rebuttal Book 3 – Expenses), page 250, where Cal Water stated its agreement with ORA’s estimate for average sales per service connection for the Selma District (lines 2-3) and provided a comparison table showing its sales per customer forecast at 265 ccf/year (or 22 ccf/month) and ORA’s forecast at 280 ccf/year (or 23 ccf/month).

asking the Commission to find reasonable an estimated 57% increase in per-customer usage from 2012 to 2014 -- from the recorded 22.7 ccf in 2012 to an estimated 36 ccf in 2014, and to accept as reasonable an estimate that is 144% of the district's 15-year average of 25 ccf/month (in 1998-2012) and 133% of the highest recorded average in that period of 27 ccf/month (in 2007).

The City of Selma stated that with “the improving economy, Selma fully anticipates water sales to return to a level close to that adopted in the Cal Water’s last GRC decision.”²⁴ However, since the last GRC decision’s adopted quantity was only 27 ccf/month,²⁵ it is extremely difficult to reconcile that level with the City of Selma’s statement and proposed 36 ccf/month forecast.

The City of Selma’s projected water use increase is also counter-intuitive when considered together with Cal Water’s conservation program. The Settlement Agreement proposes a budget to fund continuing conservation efforts in the Selma District to reduce water use that will enable compliance with Senate Bill X7-7 mandate.²⁶ It is therefore reasonable to expect conservation efforts to continue to provide downward pressure to per-customer usage in this GRC period.

Last but not least, in its analysis and support for higher water use forecast, the City of Selma and by extension Cal Water neglected to consider the impact of the district’s on-going efforts to convert flat-rate services to metered services. Cal Water has stepped up this flat-to-meter conversion program since 2009, converting an average of 174 residential services per year from 2009 through 2011.²⁷ As of end of 2011, the Selma District still has 2,349 services or customers, or 43% of the total residential class, with flat rate meters.²⁸ The company projects to convert an average of 223 services per year in

²⁴ City of Selma’s Comments, page 6.

²⁵ D.10-12-017, Attachment B.

²⁶ Settlement Agreement, Attachment B, Chapter 4 – Conservation Program. SB X7-7 requires state to achieve 20% reduction in urban per capita water use by December 31, 2020.

²⁷ Exhibit CWS-39 (Results of Operations Report – Selma District), Attachment A), Table 4-A.

²⁸ Exhibit CWS-39 (Results of Operations Report – Selma District), Attachment A), Table 4-A.

this rate case period.²⁹ Based on the adopted quantities from the last GRC, the Selma District’s residential flat rate services on average consume 45 ccf/month, compared to its metered services’ 27 ccf/month (or 40% less).³⁰ In fact, Cal Water in this proceeding stated it has assumed that the flat-to-meter conversions will proceed at the levels proposed to the Commission and will result in a 20% reduction in demand for retrofitted connections.³¹ Based on these specific water use savings data from the last and current GRCs, it is logical to expect the conversion program to continue to lower per-customer usage in Selma, or at least mitigate any upward pressure in water consumption that might materialize as a result of the City’s expected recovery from the “2008 economic downturn.”³² The expected per-customer usage reduction from the flat-to-meter conversion program also supports a Test Year 2014 average residential usage rate that is lower than the 27 ccf/month adopted in the last GRC decision for 2011 and 2012.

2. The Selma Proposal’s unrealistically high sales forecast perpetuates conditions requiring substantial rate increases.

The City of Selma correctly cited “*the average monthly sales of 27 CCF adopted in Cal Water’s last general rate case decision.*”³³ These 2011 Test Year and 2012 Escalation Year numbers were reflected in the rates established by D.10-12-017 (2009 GRC). The actual average residential monthly sales for 2011 and 2012 are 22.4 ccf and 22.7 ccf, respectively, or only about 84% of the forecasted level. This variation is the main driver for the substantial rate increase request seen in this GRC for the Selma District. In knowingly adopting unrealistically-high sales in this rate case, the Commission would perpetuate conditions where large rate increases will be needed in the

²⁹ Exhibit CWS-39 (Results of Operations Report – Selma District, Attachment A), Table 4-B.

³⁰ D.10-12-017, Attachment B.

³¹ Exhibit CWS-5, page 2.

³² City of Selma’s Comments, page 6.

³³ City of Selma’s Comments, page 8.

next rate adjustment, which is exactly the opposite of what the City of Selma purportedly is seeking to avoid.

3. The City of Selma failed to provide complete information on the impacts of its proposal.

Like the City of Lancaster, the City of Selma provided in great numerical detail how its proposal would defer Test Year 2014 increase in base rates. Remarkably, the City of Selma made no attempt to provide numerical estimates for Escalation Years' rate increases if actual sales fall short of its overly-high estimates, likely by 56% or more.³⁴ The City's choice to only highlight short-term benefit serves to obscure the potential ratepayer impacts in this rate case cycle. The City of Selma should not expect the Commission to decide the merits of the Selma Proposal based on partial disclosure of likely impacts to customer rates in this GRC cycle.

4. Proposing a new mechanism (SRM) to adjust for inaccurate sales forecasting while purposely and grossly over-projecting sales only serves to promote Cal Water's SRM agenda.

Like the City of Lancaster, the City of Selma stated that its proposal "provides the safety net in the form of the SRM to adjust sales in the unlikely event that sales do not continue to increase."³⁵ This statement implies that actual average residential sales levels falling short of its 36 ccf/month forecast is an *unlikely* event. As explained above, actual sales falling short of the 36 ccf mark is a virtual certainty. By insisting on artificially inflated sales forecasts and using them to justify the need for a safety net in a form of SRM, the Selma Proposal only serves to advance Cal Water's agenda which is to establish the SRM in this GRC.

As stated earlier, ORA strongly opposes the SRM and in its concurrently filed Opening Brief explains in great detail why Cal Water's SRM request is not in ratepayers' best interest. The Commission as well as the Selma ratepayers should question why the

³⁴ (36 ccf – 23 ccf) / 23 ccf

³⁵ City of Selma's Comments, page 7.

City of Selma would chose to align itself with Cal Water and the company's SRM agenda. ORA's opposition to the Selma Proposal is consistent with its opposition to Cal Water's SRM proposal and its statutory mission, which is to obtain the lowest possible rate for service consistent with reliable and safe service, and in fulfilling this goal, to advocate for customer and environmental protections.

C. Artificially high sales forecasts that are not based upon any sales forecasting methodology are not consistent with the Commission's direction.

The Commission recently provided direction on sales forecasting when it stated that "adopted sales forecasts may have played a significant role in causing the high WRAM/MCBA under-collections."³⁶ The Commission acknowledged that significant under-collections are of concern when it stated that "[i]n adopting the WRAM/MCBA mechanisms, the Commission did not anticipate the high under-collections that have occurred. Rather, the Commission expected lower levels of under-collections ..."³⁷ As a result, the Commission required "a more vigorous review of the Water Revenue Adjustment Mechanism/Modified Cost Balancing Account (WRAM/MCBA) mechanisms and options to the mechanisms, as well as sales forecasting, be conducted in each applicant's pending or next General Rate Case (GRC) proceeding ..."³⁸

The Commission has directed vigorous reviews of sales forecasting methods. As described above, the City of Lancaster's and City of Selma's proposals in this proceeding are not based on any methods except working backward from a desired rate increase. To adopt these proposals would be inconsistent with the Commission's recent direction in Decision 12-04-048.

Additionally, the City of Lancaster's and City of Selma's proposals in this proceeding are not consistent with the Rate Case Plan's approach to sales forecasting.

³⁶ Decision 12-04-048, Finding of Fact 9; WRAM/MCBA stands for Water Revenue Adjustment Mechanism and Modified Cost Balancing Account.

³⁷ Decision 12-04-048, Finding of Fact 10.

³⁸ Decision 12-04-048, Ordering Paragraph 4.

The Rate Case Plan adopted in D.07-05-062 specifies that customer consumption should be forecasted using a multiple regression calculation (see p. A-23). The City of Lancaster's and City of Selma's approach of working backward to a desired rate increase is not consistent with the Commission's direction in D.07-05-062 and should not be adopted."

IV. THE COMMISSION SHOULD ADOPT THE SETTLEMENT AGREEMENT WITHOUT MODIFICATIONS AND WITH CAL WATER'S CONTINUED SUPPORT FOR THE SETTLEMENT AGREEMENT CONFIRMED

In the City of Lancaster's comments, it makes various statements regarding Cal Water's position on Lancaster's proposal including: (1) "Cal Water does not oppose the request";³⁹ (2) "The Lancaster Settlement, which was conditionally agreed to by Cal Water and is not being opposed in comments by Cal Water ...";⁴⁰ and (3) "The Lancaster Settlement, which is not opposed by Cal Water ...".⁴¹

Similarly, the City of Selma makes various statements regarding Cal Water's position on Selma's proposal including: (1) "Cal Water has not opposed this request";⁴² (2) "The Selma Proposal, which is not being opposed in comments by Cal Water ...";⁴³ and (3) "The alternate proposal, which is not opposed by Cal Water ...".⁴⁴

Pursuant to the Settlement Agreement filed on October 30, 2013, Chapter 1, Section B.3., Cal Water cannot take any actions that oppose the Settlement Agreement. Further, a party's silence with any alternative proposal is not considered an "action" that opposes the Settlement Agreement. The Settlement Agreement states:

³⁹ City of Lancaster Comments, page 3.

⁴⁰ City of Lancaster Comments, page 5.

⁴¹ City of Lancaster Comments, page 9.

⁴² City of Selma Comments, page 2.

⁴³ City of Selma Comments, page 4.

⁴⁴ City of Selma Comments, page 9.

The Parties agree, without further consideration, to execute and/or cause to be executed, any other documents and to take any other action as may be necessary, to effectively consummate this Agreement. Except as specifically provided in Section A, the Parties shall take no action in opposition to this Agreement. In the event that an alternative proposal identified in Section A is presented, a party's silence to that alternative does not constitute "action in opposition to this Agreement."

Lancaster and Selma both claimed that Cal Water does not oppose their respective proposals regarding sales forecasts. However, Cal Water has confirmed that it continues to support the Settlement Agreement and that it has taken no position with respect to the Lancaster and Selma proposals.⁴⁵ While Cal Water has not taken a position regarding the Lancaster and Selma proposals, it continues to recommend a Sales Reconciliation Mechanism be adopted for all districts, which Lancaster and Selma also included in their proposals.⁴⁶ Finally, Cal Water has authorized ORA to make the statement that Cal Water's silence does not indicate support for the City of Lancaster's proposal or the City of Selma's proposal.⁴⁷

V. CONCLUSION

The Commission should adopt the Settlement Agreement and should afford no weight to the City of Lancaster's and City of Selma's comments. The City of Lancaster and City of Selma both violated Rule 12.6 by disclosing confidential settlement discussions and this alone is enough for the Commission to reject their proposals. However, if the Commission disagrees with ORA and considers The City of Lancaster's and City of Selma's proposals on their merits, ORA has shown that these proposals lack merit, are not reasonable in light of the whole record and must be rejected.

⁴⁵ Cal Water's November 20, 2013 email to ORA.

⁴⁶ Id.

⁴⁷ Id.

Respectfully submitted,

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